IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.134 OF 2006

Shri.Vishnu Abu Lad ...Appellant

Versus

Shri Mohan Khashaba Jamdade & Ors. ...Respondents

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Mr.B.A.Walimbe i/b Mr.R.V.More for Appellant.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 23, 2006.

P.C.

1. The only grievance made in this appeal is that the Respondents/Plaintiffs had initially instituted suit simplicitor for injunction but later on amended the suit to include relief of declaration. For such relief, however, necessary court fee was not paid.

2. It is argued that in the absence of payment of court fee for the added relief, the Trial Court had no jurisdiction to decide the suit. This argument clearly overlooks that the said

defect was cured before the Appellate Court by filing formal application and inviting order in that behalf. The Appellate Court in exercise of powers under Section 149 has thought it appropriate to exercise discretion in favour of the Plaintiffs for the reasons recorded in Paragraphs 9 to 12 of the impugned Judgment. There is no reason to depart from the approach adopted by the Appellate Court in this behalf. It is well settled that Appeal is continuation of suit and the defect which could be cured before the Trial Court having been cured before the Appellate Court, the issue of jurisdiction of the Civil Court will recede in the background. Counsel for the Appellant placed reliance on the decision of the Apex Court in the case of **Buta Singh (Dead by L.Rs. vs. Union of India reported in AIR 1995 SC 1945**. Court below has correctly distinguished that Judgment and instead, relied on the decision of Nagpur High Court in the case of **Baliram Bhagawanji vs. Champat Zamraji reported in 1954 Nagpur 224**.

3. No substantial question of law arises for consideration. Hence, dismissed.

A.M.KHANWILKAR, J.